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Jamie M. Higgins

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

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BRIARCLIFF MANOR, NY 10510

EXAMINER

DAZENSKI, MARC A

ART UNIT

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2621

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/560,715	Applicant(s) HIGGINS, JAMIE M.	
	Examiner MARC DAZENSKI	Art Unit 2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 13 May 2009 have been fully considered but they are not persuasive.

On page 9 of the remarks, Applicant argues in regards to claim 1, "Gunji...does not disclose 'scheduling the recording of an item, independently of user involvement..." and that because Gunji discloses user involvement, the rejection is not supported by the reference. The examiner respectfully disagrees.

In response to applicant's arguments, the recitation "independently of user involvement" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Further, the examiner notes that, as written, "independently of user involvement" can be interpreted to refer to the overall act of "managing the recording capacity." In this case, Gunji does indeed disclose a procedure in which the remaining amount of a disk which is reserved to be recorded is calculated and displayed, which reads on the claimed, "a method for managing the recording capacity of a recording device when

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scheduling the recording of an item,” as exhibited in figures 4 and 5 as well as disclose in their corresponding text.

The examiner also maintains that the remaining amended limitations of the claim are rejected in view of the explanations set forth in the previous Office Action (dated 18 February 2009). A detailed explanation of this rejection appears below.

On page 11 of the remarks, Applicant argues that "the examiner has not factually supported a prima facie case of obviousness" for three separate reasons, the first of which being that "even when combined, the references do not teach the claimed subject matter." Applicant further argues that "neither Gunji nor Imada teaches managing the recording capacity of a recording device when record an item 'independently of user involvement'..." and that "it is impossible to render the subject matter of claim 3 as a whole obvious, and the explicit terms of the statute cannot be met." The examiner respectfully disagrees, and in response points to the explanation set forth above in regards to claim 1.

On page 13 of the remarks, Applicant argues "prior art that teaches away from the claim invention cannot be used to establish obviousness," and that accordingly Gunji teaches away from the claimed invention. The examiner maintains that Applicant's arguments are on the basis of Gunji supposedly failing to disclose "independently of user involvement," and therefore in response points to the explanation set forth above in regards to claim 1.

On page 13, of the remarks, Applicant argues, "the combination of references is improper," and further argues on page 14, "there is simply no basis in the art for

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combining the references” and “the examiner’s combination arises solely from hindsight.” In response to applicant’s argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, re-encoding a recording so that it fits a desired capacity is in fact “making more efficient use of a recording capacity of a recording medium” because as Imada discloses at column 10, lines 23-26, this allows for “a plurality of contents recorded in the HD is stored in a single DVD even though the total size of the contents to be recorded exceeds the capacity of the DVD.” Further, the background section of Imada (particularly column 1, lines 32-55) gives further motivation to combine the references in the form of the scenario in which a user wishes to record multiple serials of one drama onto a single DVD.

In response to applicant’s argument that the examiner’s conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant’s disclosure, such a

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reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

On page 15 of the arguments, Applicant states that claim 13 has been amended in a similar amendment to claims 1 and 3, and that it is allowable "for reasons similar to those presented herein above with respect to overcoming the rejection of claim 3." The examiner respectfully disagrees, and in response points to the explanation set forth above in regards to claims 1 and 3.

A full rejection of the remaining claims appears below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Gunji et al (US Patent 7,212,725), hereinafter referred to as Gunji.

Regarding **claim 1**, Gunji discloses a recording/reproducing apparatus and picture recording reservation method of recording/reproducing apparatus. Further, Gunji discloses a recording/reproducing apparatus which can control a plurality of

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recording media, the apparatus comprising picture recording reservation information processing section (301) as well as remaining amount calculation processing section (401), which reads on the claimed, "a method for managing the recording capacity of a recording device when scheduling the recording of an item, independently of user involvement," as disclosed at column 3, lines 45-47; column 8, lines 38-41; and exhibited in figure 1, the method comprising:

utilizing picture recording reservation input screen (310) which includes a "mode" column allowing a recording mode to be set at various quality levels including manual, SP, and LP, which reads on the claimed, "receiving data representing a plurality of recording modes of the recording device," as disclosed at column 8, lines 48-51 and exhibited in figure 2;

utilizing a simulation system which calculates the remaining amount of a disk which is reserved to be recorded and checks whether or not the reservation recording can be made possible according to the recording time, as well as displaying the recorded capacity of a medium, the to-be-recorded capacity of a medium, and the available capacity of a medium, which reads on the claimed, "for each recording mode, calculating the capacity required to record the item using said mode; obtaining a prevailing unreserved recording capacity of the recording device," as disclosed at column 9, lines 25-30; column 9, line 66 through column 10, line 10; and exhibited in figure 4;

making comparisons between time information items of the picture recording reservation and the available capacities of the respective disks, and then displaying the

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result in the form of o's and x's, which reads on the claimed, "identifying a number of recording modes of the plurality for the recording of said item for which the calculated capacity is less than the prevailing unreserved recording capacity," as disclosed at column 9, lines 50-56 and exhibited in figure 4; and

calculating capacities required for picture recording as to the respective reservations for each of the specified reservation items and a user making a mode selection and moving the cursor to a desired row, changing the mode, the user setting the bit rate when the reserved program is recorded to any one of manual, SP, LP by selecting any one of manual, SP, LP, which then changes the item of the remaining amount calculation result to display a "o," which reads on the claimed, "where one or more recording modes of the plurality are identified for the recording of said item, selecting an identified recording mode of the one ore more identified recording modes based on a preference; and responsive to an identified recording mode being selected, scheduling the recording of the item using the selected recording mode, wherein the scheduled recording of said item becomes a reserved item," as disclosed at column 10, lines 25-38 and lines 53-60; as well as column 11, lines 1-3.

Regarding **claim 12**, Gunji discloses everything claimed as applied above (see claim 1). Further, the limitations of the claim are rejected in view of the explanation set forth in claim 1 above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-10, and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gunji et al (US Patent 7,212,725), hereinafter referred to as Gunji, in view of Imada et al (US Patent 7,254,318), hereinafter referred to as Imada.

Regarding **claim 2**, Gunji discloses everything claimed as applied above (see claim 1). However, Gunji fails to disclose adapting (120) at least one reserved item and repeating the method commencing with the obtaining step. The examiner maintains it was well known to include the missing limitation, as taught by Imada.

In a similar field of endeavor, Imada discloses a recording apparatus, recording program, and recording method. Further, Imada discloses in the case where the available capacity falls short to copy all the first priority contents, one or more first priority contents are re-encoded as necessary so as to reduce their size and then to be recorded in the DVD, which reads on the claimed, "responsive to an identified recording mode not being selected, adapting (120) at least one reserved item and repeating the method commencing with the obtaining step," as disclosed at column 12, lines 1-5 and exhibited in figure 3 (wherein the "recording mode not being selected" refers to the second or third priority programs).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the recording/reproducing apparatus and picture

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recording reservation method of recording/reproducing apparatus to include in the case where the available capacity falls short to copy all the first priority contents, one or more first priority contents are re-encoded as necessary so as to reduce their size and then to be recorded in the DVD, as taught by Imada, for the purpose of making more efficient use of the recording capacity of a recording medium.

Regarding **claim 3**, Gunji discloses a recording/reproducing apparatus and picture recording reservation method of recording/reproducing apparatus. Further, Gunji discloses discloses a recording/reproducing apparatus which can control a plurality of recording media, the apparatus comprising picture recording reservation information processing section (301) as well as remaining amount calculation processing section (401), which reads on the claimed, "a method for managing the recording capacity of a recording device when recording an item, independently of user involvement," as disclosed at column 3, lines 45-47; column 8, lines 38-41; and exhibited in figure 1, the method comprising:

utilizing picture recording reservation input screen (310) which includes a "mode" column allowing a recording mode to be set at various quality levels including manual, SP, and LP, which reads on the claimed, "receiving data representing a plurality of recording modes of the recording device," as disclosed at column 8, lines 48-51 and exhibited in figure 2; and,

calculating capacities required for picture recording as to the respective reservations for each of the specified reservation items and a user making a mode selection and moving the cursor to a desired row, changing the mode, the user setting

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the bit rate when the reserved program is recorded to any one of manual, SP, LP by selecting any one of manual, SP, LP, which then changes the item of the remaining amount calculation result to display a "o," which reads on the claimed, "selecting a recording mode of the plurality of recording modes based on a preference; commencing the recording of said item using the selected recording mode," as disclosed at column 10, lines 25-38 and lines 53-60; as well as column 11, lines 1-3.

However, Gunji fails to disclose while recording the item: obtaining a prevailing unreserved recording capacity of the recording device; and responsive to the prevailing unreserved recording capacity for recording of said item using the selected recording mode being less than a pre-determined amount, adapting at least one reserved item, wherein any initial portion of said item already recorded using the selected recording mode becomes a reserved item subject to being adapted; and determining whether recording of said item is finished wherein (i) responsive to being finished, ending the recording, and (ii) responsive to being unfinished, continuing the recording commencing with the obtaining step. The examiner maintains that it was well known in the art to include the missing limitations, as taught by Imada.

In a similar field of endeavor, Imada discloses a recording apparatus, recording program, and recording method. Further, Imada discloses recording multiple contents from a HD to a DVD wherein for each content x , the size of x is subtracted from an overall capacity y , and then the content is reencoded so as to fit within the overall capacity y , which reads on the claimed, "while recording the item: obtaining a prevailing unreserved recording capacity of the recording device; and responsive to the prevailing

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unreserved recording capacity for recording of said item using the selected recording mode being less than a pre-determined amount, adapting at least one reserved item, wherein any initial portion of said item already recorded using the selected recording mode becomes a reserved item subject to being adapted; and determining whether recording of said item is finished wherein (i) responsive to being finished, ending the recording, and (ii) responsive to being unfinished, continuing the recording commencing with the obtaining step," as disclosed at column 9, line 60 through column 10 line 22 and exhibited in figure 6A-6B.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the recording/reproducing apparatus and picture recording reservation method of recording/reproducing apparatus to include recording multiple contents from a HD to a DVD wherein for each content x , the size of x is subtracted from an overall capacity y , and then the content is reencoded so as to fit within the overall capacity y , as taught by Imada, for the purpose of making more efficient use of the recording capacity of a recording medium.

Regarding **claim 4**, the combination of Gunji and Imada discloses everything claimed as applied above (see claim 3). Further, the limitations of the claim are rejected in view of the explanation set forth in claim 3 above.

Regarding **claim 5**, the combination of Gunji and Imada discloses everything claimed as applied above (see claim 3). Further, Imada discloses a free-space preservation menu to specify a preservation of a certain amount of space in the recording medium based on a recording time input in column (nm2) as well as buttons

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for selecting one of four image qualities, which reads on the claimed, "wherein the pre-determined amount corresponds to 1 minute of recording time using the selected recording mode," as disclosed at column 14, lines 19-34 and exhibited in figures 13-14 (wherein by specifying the numeric value of column (nm2), the user can input 1 minute, 15 minutes, 60 minutes or any other value up to 120 minutes).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the recording/reproducing apparatus and picture recording reservation method of recording/reproducing apparatus to include a free-space preservation menu to specify a preservation of a certain amount of space in the recording medium based on a recording time input in column (nm2) as well as buttons for selecting one of four image qualities, as taught by Imada, for the purpose of preserving a certain amount of capacity for when a user plans to record another content scheduled to be broadcast in the future.

Regarding **claim 6** the combination of Gunji and Imada discloses everything claimed as applied above (see claim 3). Further, the limitations of the claim are rejected in view of the explanation set forth in claim 5 above.

Regarding **claim 7** the combination of Gunji and Imada discloses everything claimed as applied above (see claim 3). Further, the limitations of the claim are rejected in view of the explanation set forth in claim 5 above.

Regarding **claim 8**, the combination of Gunji and Imada discloses everything claimed as applied above (see claim 3). Further, the limitations of the claim are rejected in view of the explanation set forth in claim 3 above.

Regarding **claim 9**, the combination of Gunji and Imada discloses everything claimed as applied above (see claim 2). Further, the limitations of the claim are rejected in view of the explanation set forth in claim 3 above.

Regarding **claim 10**, the combination of Gunji and Imada discloses everything claimed as applied above (see claim 2). Further, the limitations of the claim are rejected in view of the explanation set forth in claim 3 above.

Regarding **claim 13**, the examiner maintains the claim is the corresponding apparatus to the method of claims 1 and 3, and therefore the limitations of the claim are rejected in view of the explanations set forth in claims 1 and 3 above. Further, Gunji discloses microcomputer block (30) which controls the operation of the apparatus main body as main constituents, the apparatus being able to supply information encoded in encoder section (50) and management information formed in the computer block (30) to the hard disk device (2001) or the optical disk (1001) via the data processor (36) and record the same on the hard disk or optical disk, which reads on the claimed, "an interface operable to exchange data between the processing means and the recording device; and a recording device operable to co-operate with the processing means," as disclosed at column 3, lines 59-61 and column 4, lines 44-54.

Regarding **claim 14**, the combination of Gunji and Imada discloses everything claimed as applied above (see claim 13). Further, Gunji discloses a user able to make a mode selection, and setting the bit rate when the reserved program is recorded to any one of manual, SP, LP, which reads on the claimed, "wherein the recording device is

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operable to send data to the processing means representing the plurality of recording modes,” as disclosed at column 10, lines 53-60.

Regarding **claim 15**, the combination of Gunji and Imada discloses everything claimed as applied above (see claim 13). Further, the limitations of the claim are rejected in view of the explanation set forth in claim 14 above (wherein by a user being able to change the mode, this implies that the processor is operable to receive the preference or else the mode could not be changed).

Regarding **claim 16**, the combination of Gunji and Imada discloses everything claimed as applied above (see claim 15). Further, the limitations of the claim are rejected in view of the explanation set forth in claim 14 above.

Regarding **claim 17**, the combination of Gunji and Imada discloses everything claimed as applied above (see claim 15). Further, the limitations of the claim are rejected in view of the explanation set forth in claim 16 above.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gunji et al (US Patent 7,212,725), hereinafter referred to as Gunji, in view of Imada et al (US Patent 7,254,318), hereinafter referred to as Imada, Further in view of Ellis et al (US PgPub 2002/0174430), hereinafter referred to as Ellis.

Regarding **claim 11**, the combination of Gunji and Imada discloses everything claimed as applied above (see claim 2). However, the combination fails to disclose wherein adapting the at least one reserved item comprises: deleting the reserved item based on the preference. The examiner maintains that it was well known in the art to include the missing limitations, as taught by Ellis.

In a similar field of endeavor, Ellis discloses systems and methods for interactive program guides with personal video recording features. Further, Ellis discloses an interactive television application which provides the user with the ability to assign priority to television recordings, including causing the priority of the viewed program to be reduced so that it may be deleted in preference to a program that has not yet been viewed, which reads on the claimed, "wherein adapting the at least one reserved item comprises: deleting the reserved item based on the preference," as disclosed at paragraph [0356] and exhibited in figures 51-55B.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination to include discloses an interactive television application which provides the user with the ability to assign priority to television recordings, including causing the priority of the viewed program to be reduced so that it may be deleted in preference to a program that has not yet been viewed, as taught by Ellis, for the purpose of making more efficient use of the capacity of a recording medium.

Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gunji et al (US Patent 7,212,725), hereinafter referred to as Gunji, and well known prior art (see MPEP 2144.03).

Regarding **claim 18**, the combination of Gunji and Imada discloses everything claimed as applied above (see claim 13). The combination fails to disclose wherein the interface comprises Project 50 messages conveyed over Scart. However, the examiner takes Official Notice that it was well known in the art to include wherein the interface

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comprises Project 50 messages conveyed over Scart, for the purpose of allowing a device to be compliant with Scart standards and connectors.

Regarding **claim 19**, the combination of Gunji and Imada discloses everything claimed as applied above (see claim 13). The combination fails to disclose wherein the interface comprises CEC messages conveyed over HDMI. However, the examiner takes Official Notice that it was well known in the art to include wherein the interface comprises CEC messages conveyed over HDMI, for the purpose of allowing a device to send high-definition video data.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARC DAZENSKI whose telephone number is (571)270-5577. The examiner can normally be reached on M-F, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on (571)272-7905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Marsha D. Banks-Harold/
Supervisory Patent Examiner, Art Unit 2621

/MARC DAZENSKI/
Examiner, Art Unit 2621